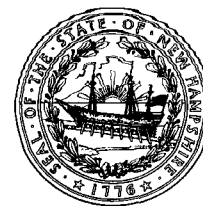




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Waterview Real Estate, Inc.  
Attn: John Lehoullier  
PO Box 237  
Hollis, NH 03049

Re: Colony Drive/Windsor Way, Barnstead  
Wetlands File # 2004-2867

**ADMINISTRATIVE ORDER  
No. WD 06-017**

April 26, 2006

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Waterview Real Estate, Inc., pursuant to RSA 482-A:6 and RSA 485-A:22. This Administrative Order is effective immediately upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Waterview Real Estate, Inc. ("WRE") is a corporation registered to do business in New Hampshire having a mailing address of PO Box 237, Hollis, NH 03049.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. WRE is the owner of property located on the corner of Colony Drive and Windsor Way in Barnstead, more particularly described as Town of Barnstead Tax Map 039 as Lot 177 ("the Property").
5. According to records maintained by the New Hampshire Secretary of State, John Lehoullier is the director and officer of WRE.
6. On November 23, 2004, DES personnel conducted an inspection on the Property. During the

inspection DES personnel found the following:

a) Fill had been placed in approximately 240 sq ft of wetland to access uplands in the back of the lot and the fill was causing water to pond in the upslope wetland;

b) The crossing was not stabilized, silt fence installed between the upslope wetland and the crossing was failing, and no erosion controls were installed to protect the adjacent stream located on the down slope side of the crossing; and

c) A steep bank of fill placed along Windsor Way extended to the wetland edge and was eroding immediately adjacent to the wetland and siltation fencing was not properly maintained.

7. On December 22, 2004, DES issued Letter of Deficiency ("LOD") WET 04-081 to WRE requesting site stabilization and submission of a restoration plan to restore the filled wetland. The LOD included specific compliance deadlines.

8. WRE did not meet any of the deadlines requested in the LOD.

9. On January 26, 2005, DES personnel discussed the status of compliance with Mr. Lehoullier. Mr. Lehoullier indicated that he was willing to comply with the LOD. He also indicated that he had personally operated a bobcat and placed the fill in the wetland for access to the back of his lot.

10. On February 7, 2005, DES issued a follow-up letter to WRE providing further guidance regarding compliance with the LOD or submission of an "after-the-fact" application. The letter extended compliance deadlines to February 18, 2005 for installation of erosion controls and to March 4, 2005 for submittal of a restoration plan.

11. WRE failed to comply with the new deadlines.

12. On March 23, 2005, DES personnel notified Mr. Lehoullier in writing of his continued non-compliance. The letter stated that failure to respond by March 28, 2005 with evidence of progress towards meeting the requests in the LOD would leave DES no option other than to issue an Administrative Order and possibly an administrative fine.

13. On March 24, 2005, Mr. Lehoullier contacted DES personnel and stated that he had retained Cuoco & Cormier Engineering to assist him with the Restoration Plan.

14. On March 31, 2005, DES personnel met on site with Mr. Lehoullier and representatives from Cuoco & Cormier. During the inspection DES personnel observed that erosion controls had not been installed and fill from the crossing had eroded into the adjacent stream. DES personnel issued a Wetlands Inspection Report with multiple directives and deadlines to bring the property into compliance.

15. On April 6, 2005 DES received photographs indicating that erosion controls had been installed to protect the stream.

16. On June 15, 2005, DES received a *Wetland Restoration Plan* from Cuoco & Cormier to remove 450 sq ft of fill from the wetland by hand. According to the plan, the restoration would take approximately 2 weeks to complete and would begin no later than July 30, 2005.

17. On June 28, 2005, DES issued a Restoration Plan Approval ("the Approval") to Mr. Lehoullier on behalf of WRE.

18. On July 6, 2005, the Approval sent to Mr. Lehoullier was returned to DES undelivered with a "Temporarily Away" sticker attached.
19. On July 29, 2005, Mr. Lehoullier contacted DES personnel. Mr. Lehoullier said he had not known the Approval was issued. DES personnel faxed a copy of the Approval to Mr. Lehoullier and explained that the Approval allowed for approximately 2 months to complete restoration.
20. On August 24, 2005, Mr. Lehoullier called DES personnel to request an extension of 1 month. DES personnel granted the extension as he had received the Approval a month late.
21. On September 12, 2005, Mr. Lehoullier requested an additional extension, which DES denied.
22. On December 5, 2005, DES personnel conducted a site inspection of the Property and confirmed that restoration had not taken place.
23. To date DES has not received any further correspondence from WRE regarding this case.

#### **D. DETERMINATION OF VIOLATIONS**

1. Waterview Real Estate, Inc., has violated RSA 482-A:3, I, by filling approximately 450 square feet of wetlands without obtaining a permit from DES.
2. Waterview Real Estate, Inc., has violated RSA 482-A:3, I, by failing to properly install and maintain temporary siltation/erosion controls resulting in additional deposition of fill into a stream.

#### **E. ORDER**

Based on the above findings, DES hereby orders Waterview Real Estate, Inc. as follows:

1. **Within 30 days from the date of this Order** implement the Restoration Approval as originally approved and conditioned by DES on June 28, 2005.
2. **Within 45 days from the date of this Order** submit to DES photographs mounted on 8.5" x 11" white paper documenting completion of #1.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Stacey Herbold, Compliance Investigator  
DES Water Division  
P.O. Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-6588  
e-mail: sherbold@des.state.nh.us

#### **F. APPEAL**

Any person aggrieved by this Order may request that DES reconsider this determination within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the

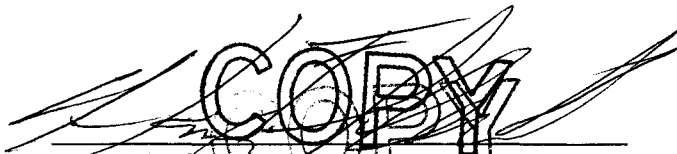
decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.


Filing an appeal or request for reconsideration of the Order will not automatically relieve Waterview Real Estate, Inc., of its obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Waterview Real Estate, Inc., remains obligated to comply with all applicable requirements. DES will continue to monitor Waterview Real Estate, Inc.'s compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.

  
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Harry T. Stewart, P.E., Director  
Water Division

  
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Michael P. Nolin, Commissioner  
Department of Environmental Services

Certified Mail/RRR: 7006 0100 0005 8153 5047

cc: Gretchen Hamel, Legal Unit Administrator  
Public Information Officer, DES PIP Office  
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Town of Barnstead Board of Selectmen and Conservation Commission  
Michael J. Atkins, Esquire, Registered Agent